

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-128
Hawaii Administrative Rules

April 17, 2008

1. Chapter 3-128 of Title 3, Hawaii Administrative Rules, entitled "Governmental Relations and Cooperative Purchasing"(Interim) is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 128

GOVERNMENTAL RELATIONS AND COOPERATIVE PURCHASING

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§3-128-3	Cooperative purchasing agreements between public procurement units
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§3-128-7	Procurement of goods produced or services performed by governmental institutions
§3-128-8	Compliance with federal requirement

Historical Note. This chapter 3-128, subtitle 11 of title 3, Hawaii Administrative Rules:

1. Replaces interim rules dated 12/7/06 (file no. 2732) that amended sections 3-128-2 and 3-128-4.

§3-128-1 Definitions. Section 103D-801, HRS, provides definitions applicable to terms used in this chapter. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-801)

§3-128-2 Cooperative purchasing subject to chapter 103D, HRS. (a) Prior written approval of the chief procurement officer is required before entering into a cooperative purchasing agreement.

(b) Procurement by cooperative purchasing agreements shall be done in compliance with the requirements of chapter 103D, HRS, and title 3, subtitle 11, HAR, except when the cooperative agreement is initiated by an external procurement unit; ~~provided, that in any event, no cooperative purchasing agreement may be entered into without the prior written approval of the chief procurement officer.~~

~~(b)~~ (c) Contracts described in section 3-122-143, HAR, are the principal contract types for cooperative purchasing agreements subject to any restrictions specified in this chapter.

(d) Agencies shall not participate or "piggy-back" onto an existing contract; including contracts issued by the federal government or other state or local governments due to the noncompliance of the public notice requirements of section 3-128-4 prior to the execution of these contracts. The term "piggy-back" is defined as procuring goods, services, or construction using another agency's contract without prior public notice and intent to participate. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am 12/7/06; m and comp

] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-804)

§3-128-3 Cooperative purchasing agreements

between procurement units. All cooperative purchasing agreements shall provide that:

- (1) A procurement unit shall be designated as lead agency for the procurement;
- (2) An order for any good or service shall be placed on an as needed basis by the participating procurement units in accordance with the terms and conditions of the agreement;
- (3) Payment for any good or service shall be the exclusive responsibility of the procurement unit which placed the order;
- (4) Inspection and acceptance of any good or service shall be the exclusive obligation of the procurement unit which placed the order;
- (5) The lead agency for the procurement may terminate the cooperative agreement with a procurement unit for failure of that unit to comply with the terms of the contract;
- (6) The exercise of any warranty rights attached to any good or service obtained through a purchase order shall be the exclusive right of the procurement unit which placed the order; and
- (7) Failure of a procurement unit ~~[which]~~ that is procuring the good or service from a cooperative agreement contract to secure performance from the contractor pursuant to its terms and conditions, may not necessarily preclude the remaining procurement units from obtaining goods and services from the cooperative agreement contract. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am and comp] (Auth: HRS §103D-202)
(Imp: HRS §§103D-802, 103D-803)

§3-128-4 Public notice of cooperative purchasing agreements between public procurement units and external procurement activities. Any public procurement unit intending to participate in an external procurement unit's cooperative purchasing agreement, shall place a public notice within the State pursuant to section 3-122-16.03, of the external procurement unit's solicitation. The notice shall also include a statement of the public procurement unit's intent to participate in such cooperative purchasing

agreement. [Eff 12/15/95; comp 11/17/97; comp 11/15/01; comp 11/25/02; am 12/7/06; comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-803)

§3-128-5 Cooperative purchasing agreements between chief procurement officers and nonprofit private procurement units. (a) A chief procurement officer may enter into a cooperative purchasing agreement with a nonprofit private procurement unit if:

- (1) The nonprofit private procurement unit is under a purchase of services contract with the State, pursuant to chapter 103F, HRS; and
- (2) The nonprofit private procurement unit submits an application to enter into a cooperative purchasing agreement and receives approval from the chief procurement officer. An agreement form shall be developed by the chief procurement officer for this purpose.

(b) The chief procurement officer may charge a nominal fee for participation by a nonprofit organization. [Eff 12/15/95; comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; comp] (Auth: HRS §103D-202) (Imp: HRS §§103D-802, 103D-804)

§3-128-6 Supply of personnel, information and technical services. Requests to one public procurement unit by another public procurement unit, or an external procurement activity to provide or make available personnel, services, information, or technical services pursuant to section 103D-806, HRS, shall be complied with only to the extent that the chief procurement officer determines that it is practicable to do so. [Eff 12/15/95; comp 11/17/97; comp 11/15/01; comp 11/25/02; comp] (Auth: HRS §103D-202) (Imp: HRS §103D-806)

§3-128-7 Procurement of goods produced or services performed by governmental institutions. Goods or services provided by ~~[Ho'opono workshop,]~~ correctional industries, or other governmental institutions may be obtained by governmental agencies without public solicitation. [Eff 12/15/95; comp 11/17/97; am and comp 11/15/01; am and

comp 11/25/02; am and comp] (Auth: HRS
§103D-202) (Imp: HRS §103D-803)

§3-128-8 Compliance with federal requirement.
Any procurement which involves the expenditure of
federal assistance or contract monies shall comply with
this chapter and applicable federal law and
regulations. [Eff 12/15/95; am and comp 11/17/97; comp
11/15/01; comp 11/25/02; am and comp]
(Auth: HRS §103D-202) (Imp: HRS §103D-102)

§3-128-9 Interim rules. This chapter 128,
subtitle 11 of title 3, Hawaii Administrative Rules,
replaces rescinded interim rules previously adopted on
11/15/01 (file no. 2401) and amended on 12/7/06
(file no. 2732)." [Eff 11/25/02; comp]

2. Material, except source notes, to be repealed
is bracketed. New material is underscored.

3. Additions to update source notes to reflect
these amendments and compilation are not underscored.

4. These amendments to and compilation of
chapter 128 (Interim), Hawaii Administrative Rules,
shall take effect ten days after filing with the Office
of the Lieutenant Governor; provided further, pursuant
to section 103D-202, HRS, these interim rules shall be
issued by Procurement Directive and be effective for
not more than eighteen months.

I certify that the foregoing are copies of the
rules, drafted in the Ramseyer format pursuant to the
requirements of section 91-4.1, Hawaii Revised
Statutes, which were adopted on April 17, 2008 and
filed with the Office of the Lieutenant Governor.

GREGORY L. KING
Chairperson
Procurement Policy Board

RUSS SAITO
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General